

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

*

CRIMINAL NO: 13 - 15

v.

*

SECTION: "K"

ANTHONY PENN

*

* * *

FACTUAL BASIS

Should this matter have gone to trial the Government would have proven, through the introduction of competent testimony and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in the indictment pending against the defendant¹:

On August 29, 2005, Hurricane Katrina struck southeast Louisiana causing widespread damage to the City of New Orleans. In an effort to assist the City of New Orleans with the recovery process, the United States Army Corps of Engineers, an agency of the United States Federal Government, hired Phillips and Jordan, a national construction company, to manage the removal of storm debris from the City. Phillips and Jordan in turn hired multiple subcontractors to gather debris

¹ This factual basis does not contain all of the facts that were developed in connection with the investigation of this matter. However, it does contain all of the pertinent facts that support Anthony Penn's guilty plea to the crime of conspiracy to defraud the United States in violation of 18 U.S.C. § 371, and to receive kickback payments in violation of 41 U.S.C. § 8702 and 8707.

from various parts of the city. Company A (not identified by his actual name herein), a local solid waste management business, was one of the aforesaid sub contractors hired by Phillips and Jordan to assist with debris removal. Company A then hired several sub-tier subcontractors to assist them with the project. Mr. X (not identified by his actual name herein), owned and operated Company A. Ms. C (not identified by her actual name herein), was employed by Company A as a supervisor.

Lacking the personnel to manage the debris removal contract Mr. X hired Anthony Penn (hereinafter “**Penn**”), a local businessman, to manage the project for his company. Company A paid **Penn** \$5,000 per month for his services. Those payments were wired to **Penn’s** bank account by Company A on a monthly basis. Ms. C wired Company A’s last paycheck to **Penn** on January 31, 2008. This wire transfer contained a note in the payment instruction indicating that the payment was made to **Penn** for February 2008 services. At trial, Mr. X and Ms. C would testify that they made that payment to **Penn** for work that he was performing on the debris removal project for Company A.

As the manager of the debris removal project, **Penn** was responsible for ensuring that all of Company A’s sub-tier subcontractors were paid in a timely manner, and that they provided proof of all required insurance coverages during the project. After sometime on the job, **Penn** asked Mr. X if he would consider hiring KCJ Enterprises, a small landscaping and construction company from Stone Mountain, Georgia, as a sub-tier subcontractor to handle a portion of the cleanup project. **Penn** also suggested to Kenneth Johnson (“**Johnson**”) that he contact Mr. X about the project. Mr. X accepted **Penn’s** recommendation and hired KCJ Enterprises as a sub-tier subcontractor. Sometime after KCJ Enterprises was hired by Company A, **Penn** asked **Johnson**, one of the owners of KCJ Enterprises, to kickback a portion of the revenues that his company received from Company

A. As a reward for steering the lucrative Company A subcontract to him and his company, **Johnson** willingly agreed to the kickback scheme and began wiring funds from his company's bank account with Wachovia Bank through interstate commerce to **Penn's** bank account with Bank of America. The payments started on or about July 12, 2006, and the last kickback payment was wired to **Penn** by **Johnson** on or about February 8, 2008, in the amount of \$32,500.00. This kickback payment was wired to **Penn** four days after KCJ Enterprises received a disbursement from Company A totaling \$11,980.00. During the aforesaid time period, **Johnson** wired approximately \$255,059.03 to **Penn**. **Penn** acknowledges and stipulates that many of the payments made to him by KCJ Enterprises and **Johnson** were strictly unlawful kickback payments, and not consulting fees. **Penn** further acknowledges and stipulates that he never worked in any capacity for KCJ Enterprises or **Johnson** in connection with Company A's debris removal project.

At trial, Mr. X and Ms. C would testify that it was Phillips and Jordan's policy to withhold a retainage of ten percent of the earnings it owed to its sub-tier subcontractors to ensure that Company A had funds to payoff any personal injury or property damage claims that they may have caused in the field while working on the project for Company A. They would also testify that in 2007, Company A was audited by their workmen's compensation carrier, Louisiana Workmen's Compensation Corporation ("LWCC"), after the debris removal contract was concluded to determine if they owed them any more insurance premiums. Once the premium audit was completed, LWCC charged Company A extra premiums for KCJ Enterprises' employees. Company A was charged the extra premiums because KCJ Enterprises had failed to maintain its own workmen's compensation policy in force throughout the duration of the project. Mr. X and Ms. C would also testify that after Company A was charged those premiums, **Penn** began acting as an intermediary between Company

A and KCJ Enterprises to resolve a dispute that arose between them over the extra insurance premiums. After the audit with LWCC for KCJ's insurance deficiency was settled, the rest of the retained earnings were released to KCJ Enterprises. **Penn** admits that he received a portion of the recovered, retained earnings that were returned to KCJ Enterprises by Company A as a kickback payment on February 8, 2008, in the amount of \$32,500.00.

Special Agents with the Federal Bureau of Investigation and Investigators with the United States Department of Defense eventually learned of the kickback scheme between **Penn** and **Johnson** through confidential sources. As such, they launched an investigation to determine if the kickback payments from **Johnson** to **Penn** actually occurred. To that end, the agents obtained copies of **Penn's** bank statements with Bank of America, and copies of KCJ Enterprises bank account with Wachovia Bank. The bank statements confirmed that **Penn** received kickback payments from **Johnson** and KCJ Enterprises. In addition to reviewing the aforementioned bank accounts, agents with the FBI also analyzed the load tickets and invoices that were submitted to **Penn** for payment approval by KCJ Enterprises and the other sub-tier subcontractors that worked on the debris removal project of Company A. Through their analysis, they discovered that **Penn** had occasionally overpaid KCJ Enterprises for the load tickets that they submitted to Company A for payment.

The FBI agents would testify that they analyzed **Penn's** federal tax return for 2007 to determine if he declared the kickback payments as income in the return. The agents would also testify that **Penn** claimed the kickback payments as income that he earned from a company called SAT Development.

Employees from the Department of Defense would testify that the funds used to pay Phillips

and Jordan, Company A, KCJ Enterprises, and other subcontractors involved in the debris removal project were government funds that came from the United States Treasury. Executives with Phillips and Jordan would testify at trial that they had no knowledge of the existence of the kickback scheme, and would have forced Company A to drop KCJ Enterprises as a sub-tier sub contractor had they learned of its existence at the time of the project. Mr. X would testify at trial that he was unaware of the kickback scheme that existed between **Penn** and **Johnson** during the time that KCJ Enterprises was working for Company A as a sub-tier subcontractor. Mr. X would also testify that he would have fired **Penn** and terminated his business dealings with KCJ Enterprises if he had discovered the existence of kickback scheme when it was occurring.

By engaging in the behavior outline above, **Penn** knowingly conspired with **Johnson** to defraud the United States in violation of 18 U.S.C. § 371.

READ AND APPROVED:

_____ Defendant	_____ Date
ANTHONY PENN	

_____ Counsel for Defendant	_____ Date
WALTER BECKER	

_____ Assistant United States Attorney	_____ Date
SPIRO G. LATSIS	